

#15
CD
11/12/02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Atty. Docket: EINAT=7D

In re Application of:)	Conf. No.: 8980
)	
Paz EINAT)	Art Unit: 1634
)	
Appln. No.: 09/905,129)	Examiner: Frank W.M. Lu
)	
Filed: July 13, 2001)	Washington, D.C.
)	
For: GENES ASSOCIATED WITH)	November 7, 2002
MECHANICAL STRESS ...)	
)	

RECEIVED

NOV 08 2002

RESPONSE

TECH CENTER 1600/2900

Honorable Commissioner for Patents
Washington, D.C. 20231

Sir:

The present communication is responsive to the Official action of August 7, 2002. Claims 1-30 presently appear in this case. No claims have been examined on the merits. All of the claims have been subject to a restriction requirement. The Official action of August 7, 2002, has now been carefully studied. Prompt consideration on the merits and allowance is hereby respectfully urged.

The examiner has required restriction among eight allegedly independent and distinct inventions. The examiner states that because the inventions are distinct and have acquired a separate status in the art, restriction for examination purposes as indicated is proper.

11/13/2002 CDESSAD 00000001 024035 09905129

01 FC:2252 200.00 CH

Applicant hereby elects without traverse the claims of Group II, including claims 6, 7, 10, 21 and 22.

The examiner states that each group reads on patentably distinct SEQ ID NOs. and each sequence is patentably distinct because the sequences are structurally unrelated and a further restriction is applied to each group. The examiner states that applicant must further elect a single SEQ ID NO.

Applicant hereby elects the polypeptide sequence of SEQ ID NO: 21, and, if necessary, the corresponding nucleotide sequence. While the examiner states that examination will be restricted only to the elected SEQ ID NO., and this should not be construed as a species election, it is urged that as long as the SEQ ID NO. is part of a generic claim, the full scope of the claim must be examined. If the examiner considers the Markush group to be an improper Markush group, then a rejection on this grounds should be made regardless of whether or not each of the SEQ ID NOs. are independent and distinct inventions.

The examiner states that Group II contains claims directed to the following patentably distinct species of the claimed invention:

(1) administering an isolated nucleic acid molecule (claims 6 and 7),

(2) administering an isolated polypeptide (claim 21),
and

(3) administering an antibody (claim 22).

The examiner has required applicant to elect a single disclosed species for prosecution on the merits to which the claim shall be restricted if no generic claim is found to be held allowable. Claim 10 is generic. The examiner states that upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species.

Applicant hereby elects species (2) comprising administering an isolated polypeptide. Claims 10 and 21, read on the elected species.

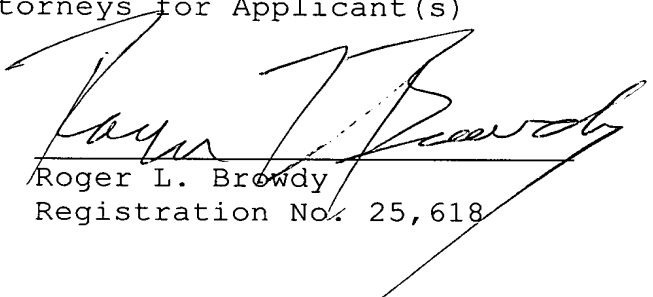
The examiner states that if Group IV is elected, species requirement are also applicable. However, as Group IV has not been elected, no elections need be made at this time.

Prompt consideration and allowance of the elected species is therefore earnestly solicited.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant(s)

By


Roger L. Browdy
Registration No. 25,618

RLB:wlm

Telephone No.: (202) 628-5197

Facsimile No.: (202) 737-3528

G:\BN\Q\QBI\Einat7B\Amendment A.doc